

IN THE HIGH COURT OF FIJI AT LAUTOKA

CIVIL JURISDICTION

CIVIL APPEAL HBA NO. 11 OF 2017

BETWEEN : SHIVA SANKARAN of Wairuku, Rakiraki

APPELLANT

AND : KAMLESH GOUNDAR of Wairuku, Rakiraki, Farmer

RESPONDENT

Appearance: Mr. William Rosa for the Appellant  
Ms. Anishni Chand for the Respondent  
Date of Hearing: 13 September 2019  
Date of Ruling: 10 December 2019

RULING

- (1) I am dealing with an application to reinstate an appeal which was struck out on account of the appellant's solicitor's non-appearance on several call-over dates.
- (2) It is now clear that the reason why the appellant's solicitor did not appear on those dates is because his practicing certificate was being withheld for one reason or another.
- (3) The claim at the Magistrates Court was for the return of a deposit purportedly paid pursuant to a sale and purchase agreement which failed for one reason or another.
- (4) After having read submissions and heard counsel, I note the following:
  - (a) the motion for reinstatement is dated 24 May 2019. However the matter was struck out on 25 May 2019.

- (b) the affidavit in support of the reinstatement was sworn on 24 May 2019. In it the deponent deposes that he was actually out of the country on 24 May 2019. However on that day, he actually swore his affidavit in Fiji before a local Commissioner for Oaths. Furthermore, the affidavit is sworn by a solicitor who works for a firm of solicitors which is the city agent of the firm of solicitors instructed by the applicant.
- (5) One gets the impression that the applicant has lied in his affidavit.
- (6) The applicant has not bothered to file a further supplementary affidavit to explain the obvious irregularities in his dates.
- (7) I have asked myself the question whether I should allow the applicant further time to file a supplementary affidavit to explain the irregularities in his dates. I have decided not to.
- (8) If I were to allow him to, I would already be treating this lie as a mere inadvertence.
- (9) The application is dismissed. Costs to the Respondent which I summarily assess at \$300-00 (three hundred dollars) only.



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Anare Tuilevuka  
**JUDGE**  
Lautoka